



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

IN THE MATTER OF THE APPLICATION OF)	<u>TELECOMMUNICATIONS</u>
VERIZON NEW JERSEY, INC. FOR THE)	
APPROVAL OF THE SALE AND CONVEYANCE)	ORDER OF APPROVAL
OF REAL PROPERTY LOCATED IN THE CITY)	
OF CLIFTON, PASSAIC COUNTY, NEW JERSEY)	
TO THE VAN NESS FAMILY TRUST)	DOCKET NO. TM04101111
)	

(SERVICE LIST ATTACHED)

BY THE BOARD

On October 8, 2004, Verizon New Jersey Inc. ("Petitioner" or "VNJ") filed an application for approval of the sale and conveyance of real property located in the City of Clifton, Passaic County, New Jersey to the Van Ness Family Trust ("Buyer"). According to the petition, VNJ is the owner of certain property consisting of a two story 14,845 square foot building on approximately 2.075 acres of land located in the City of Clifton, Passaic County, New Jersey ("Property"). The Property is known and designated as Lot 48-4, in Block 2, on the City of Clifton Tax Map. The street address of the property is 330 Brighton Road, Clifton, New Jersey.

The Property was acquired on May 19, 1960 at a purchase price of \$68,000. Improvements to the Property consist of the existing one-story 14,845 square foot building constructed in May 1960 and subsequent incidental improvements thereto at a total cost to date of \$843,344. The Property was acquired as a site for an office building for Petitioner's Passaic District Headquarters. The Property ceased to be used for such purpose on or about October 2004, when the personnel from this location were transferred to another existing location in Teaneck. On December 2003, VNJ determined that the Property was not required for any present or prospective utility purposes and therefore would be marketed for sale.

On January 27, 2004, Petitioner obtained an appraisal of the Property from Welsh Chester Galiney Matone, Inc., a real estate appraiser, which determined that the market value of the Property as January 27, 2004 was \$1,100,000. In January 2004, Petitioner engaged the services of the real estate brokerage firm of CB Richard Ellis to represent it in marketing and selling the Property.

On May 2 and May 9, 2004, the Petitioner advertised the property for sale in the Star Ledger and solicited bids. One bid was received from the Buyer, the Van Ness Family Trust in the amount of \$1,111,000. The Petitioner accepted the bid of the Van Ness Family Trust. Petitioner believes that the Buyer's bid is the best price attainable for the Property and represents the true fair market value of the Property.

According to VNJ, Petitioner reserves no rights or interests in the Property except all right, title and interest in and to all telecommunications facilities presently located in the public streets adjoining the property and permanent and perpetual right, privilege, authority, easements and right of way to place, replace, construct, install, operate, use, repair, maintain, relocate and remove such telecommunications facilities as VNJ and its successors and assigns may from time to time deem necessary in, on, over, under, and through the streets adjoining the Property.

According to the Petition, Petitioner believes that the Purchase Price of \$1,111,000 is the best price attainable for the Property based upon the marketing efforts and appraisal described above. The Property is presently carried on Petitioner's books in the amount of \$482,859. The Property is not income producing, and its 2004 assessed value is \$1,494,200. There is no relationship between the Petitioner and the Buyer other than that of Transferor and Transferee.

VNJ and the Buyer state that they have complied with all statutory requirements regarding sale of utility Property as contained in N.J.A.C. 14:1-5.6 and N.J.S.A. 48:3-7 except the subsection of N.J.A.C. 14:1-5.6 (b) 5 which requires the disclosure of the time and place for submitting the bids and for which the Petitioner is seeking a waiver. Petitioner acknowledges that the form of the advertisements technically deviated from the provision of the Board rule in that they inadvertently failed to disclose the "time and place" of the openings of bids. According to the Petitioner, the non-confirming advertisements were based upon an erroneous form of advertisement inadvertently used by one of the Petitioner's real estate consultants. Since discovery of this error, according to the Petitioner, the erroneous form has been corrected.

Accordingly, Petitioner requested the waiver or relaxation of the rule pursuant to N.J.A.C. 14:1-1.2, which provides that in special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules. Petitioner believes that its request of waiver is justified for the following reasons:

- all other requirements of the rules are met by the form of advertisement that resulted in the Buyer's successful bid of \$1,111,000. Specifically, according to the Petitioner, the advertisement sets forth the time and place for delivery of bids which is more than ten days from the date of the second advertisement; and the bids were opened at a place in the State of New Jersey within 5 days following the final date for submitting bids as required by Board Rules;
- the Property was advertised for sale on two separate occasions. The advertisements produced the Buyer's high bid of \$1,111,000, which exceeded the appraised fair market value;
- the Petitioner and the Buyer have, in good faith, entered into an arms length contract for the purchase and sale of the Property at a price that substantially represents the fair market value of the Property. Petitioner claims that not permitting the sale to proceed because of a technical deviation would result in a severe hardship and inconvenience to the Petitioner and the Buyer;

- according to the Petitioner, the prejudice and inconvenience to the Petitioner and the Buyer, which would result from full compliance with the rules at this stage of the transaction clearly outweigh requiring full compliance and constitute good cause for waiving or relaxing the rules; and
- no substantive right of any party will be affected by the requested waiver or relaxation of full compliance with the rules.

VNJ further seeks waiver of the requirement of N.J.A.C. 14:1-5.6(b), which requires that the Property be advertised for sale "within 150 days immediately prior to the filing of the petition for the approval of the sale..." Petitioner acknowledged that the Property was in fact advertised for sale on May 2, 2004 and May 9, 2004, dates which are 160 days prior to the filing of Petition. Petitioner stated that it did not meet the 150 days deadline because of delays in execution and distribution of the Agreement and in obtaining signatures of Directors for the Unanimous Consent Resolution approving the sale. Petitioner submitted that the delay of 10 days in filing the Petition is de minimus and that granting the waiver will not affect the substantive rights of any party.

RATEPAYER ADVOCATE'S COMMENTS

The Ratepayer Advocate believes that VNJ could have increased the chances of getting bids higher than \$1,111,000 by adding the 47 potential bidders that were included in the City of Maplewood property sale. In addition, the Ratepayer Advocate also believes that VNJ has provided no satisfactory basis for the waivers requested. The Ratepayer Advocate maintains that if the Board is inclined to grant approval of the VNJ's petition the Board should order that ratepayers be entitled to share equitably in the proceeds from the sale of the property. Additionally, the Ratepayer Advocate requests that the Board include in its Order that VNJ ensure that the proceeds from this transaction are made available with interest according to the Board's decision in the sharing investigation currently being reviewed by the Board.

VNJ REPLY COMMENTS

On December 13, 2004, VNJ responded to the Ratepayer Advocate's comments. VNJ asserts that the Ratepayer Advocate objects to this proposed sale on minor technical grounds and continues to argue that ratepayers be permitted to share in the proceeds of the sale, an issue presently pending before the Board. According to VNJ, the Ratepayer Advocate's contention that another round of bids would have produced higher bids is, at best, speculative and is not a valid reason to withhold approval of a sale for a price that indisputably exceeds the appraised value of the Property. VNJ argues that the Ratepayer Advocate's contention that the equalized assessed value of the Property is higher than the appraised value is also without merit. VNJ cited the appraisal report that expressly recognized the higher assessment and concluded that "[B]ased upon the value concluded in this report, the assessment appears to be high." According to VNJ, it is axiomatic that local assessed value does not always reflect the true fair market value of property and that certainly is true here where the assessment conflicts both with the independent appraised value and the highest bid produced in the marketplace.

VNJ argues that the Ratepayer Advocate's suggestion that approaching potential buyers who had expressed interest in a totally different property in another municipality and another county could have increased the number of bidders is preposterous. According to VNJ, its real estate

managers, with the advice of professional licensed real estate brokers, devised the marketing strategy for this and other properties. VNJ asserts that these consultants who have greater expertise and are far better equipped to determine prospective buyers of a particular property than the Ratepayer Advocate. VNJ claims that its real estate professionals know that particular developers/investors are typically interested in specific types or uses of properties within their target markets. VNJ argues that buyers interested in properties located in Maplewood (Essex County) are not necessarily interested in properties located in Clifton (Passaic County) and vice versa.

VNJ reiterates its position that the 10 days delay in filing the petition was due to delay in execution and distribution of the Agreement and that the delay is de minimus, which did not affect the rights of any parties.

VNJ also noted that the same objection was made by the Ratepayer Advocate in a previous sale of property and was rejected by the Board, which concluded that the grant of the waiver is justified because the violation of the bidding process was of a technical nature such that it did not impact upon the ultimate bid results. VNJ believes that the same conclusion applies here and the requested waiver should be granted. VNJ, in response to the Ratepayer Advocate's reassertion regarding the sharing of proceeds as set forth in its comment letters to this and prior property sales, stated that it would like to incorporate its comments submitted in the sharing investigation as if more fully set forth herein.

In response to the Ratepayer Advocate's objection to VNJ's requested waivers, VNJ responds that the waivers of the requirements are plainly justified given the fact that no conceivable harm to any party would result and that the additional cost of starting over the selling process would be avoided by the relaxation of these rules (as well as the risk of losing the sale to the Buyer who submitted by far the highest bid).

BOARD'S DISCUSSION

The issue of whether the proceeds of sale of the subject Property should be shared with the ratepayers has been resolved in a separate docket, I/M/O the Board's Investigation as to Whether Ratepayers Should Share in the Proceeds Arising from the Sale and Conveyance of Real Property by Verizon New Jersey, Inc. Docket No. TX04080749, where the Board found that sharing is not required. The issue is therefore moot. Additionally, the Board FINDS that the technical violation of the bidding process here was the result of an inadvertent omission in the bid package, did not impact negatively upon the overall outcome and thus did not result in a flawed bid. As such, the Board FINDS good cause to waive N.J.A.C. 14:1-5.6(b) 5, which requires notice of the time and place of the bid opening in this matter. As stated in its pleadings, the non-confirming advertisements were based upon an erroneous form of advertisement inadvertently used by one of the VNJ's real estate consultants. Since discovery of this error, according to VNJ, the erroneous form has been corrected. While the Board has granted a similar waiver in response to other petitions, the Board nevertheless must place VNJ on notice that future waiver requests of this nature will not be looked upon favorably. In addition, the Board agrees with VNJ that the 10 day delay in filing the petition is de minimus and therefore, FINDS good cause to waive N.J.A.C. 14:1-5.6(b). Thus, and in view of the foregoing, the Board FINDS that the proposed sale of said Property will not affect Petitioner's ability to provide safe, adequate and proper service, is in the public interest and in accordance with law, and accordingly HEREBY APPROVES the sale, subject to the following conditions:

Petitioner is directed to advise the Board of the date on which the transaction is completed, within ten (10) days of completion;

This Order shall be of no effect, null and void, if the sale hereby approved is not completed within six (6) months of the date hereof unless otherwise ordered by the Board; and.

The approval of the proposed journal entries recording the sale of this Property shall not affect or in any way limit the exercise of the authority of this Board, or of this State, in any future petition or in any proceeding with respect to rates, financing, accounting, capitalization, depreciation or in any other matters affecting Petitioner.

DATED: 12/23/24

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

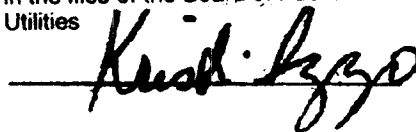

CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



In the Matter of the Application Verizon New Jersey, Inc.
For Approval of Sale and Conveyance of Real Property Located in the
City of Clifton, Passaic County, New Jersey to Van Ness Trust

SERVICE LIST

Docket No. TM04101111

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